



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/325,296 06/03/99 REIDENBACH

B 1493-M

EXAMINER

QM12/0712

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ART UNIT

PAPER NUMBER

3727 *12*

DATE MAILED:

07/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/325,296

Examiner

Nathan J. Newhouse

Applicant(s)

REIDENBACH, BRYAN L.

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

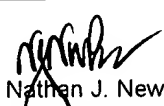
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
- (b) ☐ they raise the issue of new matter. (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____.
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1,5-14,17 and 21.
- Claim(s) withdrawn from consideration: _____.
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
11. ☐ Other: _____


Nathan J. Newhouse
Primary Examiner
Art Unit: 3727

Continuation of 6. does NOT place the application in condition for allowance because: applicant has not overcome the rejection of claims 1, 5-14, 17 and 21 under 35 USC 112 or the rejections of claim 1 under 35 USC 102.

With respect to the rejection of claims 1, 5-14, 17 and 21 under 35 USC 112, first paragraph, applicant argues that there is support for claiming only one inner skirt(claim 17) only two inner skirts(claims 1, 6) and only one upper and one lower inner skirt(claim 14) and the examiner is incorrectly applying the concept of undue breadth. Applicant is incorrect. "Even in a mechanical case, claims may be no broader than the supporting disclosure. A narrower disclosure will limit claim breadth." GENTRY GALLERY INC. v. BERKLINE CORP. 134 F.3d1473, 45 USPQ 2d 1498(Fed. Cir. 1998). As stated previously, applicant has not described in the specification the breakaway skirt with only one (claim 17) inner skirt, two inner skirts(claims 1, 6) or one upper and one lower inner skirt(claim 14). Moreover, it is not clear if the breakaway skirt with the different inner skirt configurations as set forth in these claims would function properly. That is, if only one inner skirt is provided, would the breakaway skirt function or would the cap be able to be removed without the breakaway skirt being separated from the cap. In order to overcome this rejection, applicant can file an affidavit/declaration that the breakaway skirt will work with only one inner skirt(claim 17), only two inner skirts(claim 1, 6), or one upper and one lower inner skirt(claim 14) no matter where each of these is located and their relative circumferential extent or size in relation to the breakaway skirt and this coincides with what is shown in the figures. Relative size of any of the inner skirts will be presumed to be of a size relative to the container they are on as proportionately shown in the disclosed figures unless otherwise stated in the declarations. Of course, a nexus with the claims as set forth must exist.

With respect to the rejection of claim 1 under 35 USC 102(b) as being anticipated by either Barriac or the EP reference as set forth in the final office action(paper #10), applicant's arguments are incorrect. First, these rejections were the same rejections applied in the final action(paper #6) and therefore it was proper to apply them again in a final action as applicant had not amended the claims. Applicant argues that these references do not teach the limitation of the securing strap, but this limitation is not in claim 1, but in claim 5 which has not been rejected on art.